

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1791 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHHAGANBHAI CHHIMANBHAI DESAI

Versus

HARSHADKUMAR CHANDUBHAI RAVAL

Appearance:

MRS KETTY A MEHTA for Petitioners
MR SB VAKIL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 03/02/98

ORAL JUDGEMENT

Appellants are the original claimants- parents of deceased Kiritkumar, who lost his life in a road accident which occurred on 8.5.1982 when deceased was proceeding on motor cycle No. G.T. 5967 as a pillion rider and the motor truck No. GTE 7862 coming from the opposite direction, in a rash and negligent manner, dashed against

the motor cycle. The venue of the incident was near Ambheta village, near sugar factory on the road leading from Billimora Highway No.6. This First Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is filed being dissatisfied by the judgment and award of the Motor Accident Claims Tribunal, Valsad at Navsari, recorded on 7.7.1984 in M.V. Claim Petition No. 187 of 1982, whereby, the appellants came to be awarded an amount of Rs.20,000/- with interest and cost.

The following aspects are no longer in controversy:

- 1) Deceased Kiritkumar was aged about 24 years at the time of the unfortunate road mishap.
- 2) Appellants/original claimants are the parents, aged about 56 and 54 (father and mother) respectively at the relevant time.
- (3) Deceased was unmarried son of the appellants.
- (4) Deceased was earning an amount of Rs.850.20 ps. as a clerk as per the salary certificate produced at Ex.45.

The Tribunal has failed to appreciate the celebrated aspect of prospective earning while determining the dependency value and the resultant loss to the parents. The Tribunal has considered the dependency value at Rs.150/- per month only and had adopted six multipliers.

After having considered the submissions raised before us and the evidence and the celebrated settled proposition relevant for considering the quantum of compensation, we are satisfied that the dependency benefits and the value adopted by the Tribunal without taking into consideration the potential and prospective earnings of the deceased requires our interference. The amount of compensation awarded is grossly inadequate. It is a settled proposition of law that the Tribunal is obliged to consider not only the income of the deceased or the victim at the relevant time but it has also to consider the potential and prospective earnings so as to arrive and determine fair and reasonable amount of compensation for the harm and the resultant injuries sustained on account of the road accident.

In the light of the facts of the present case and the celebrated and relevant proposition of law and considering the prospective earnings of the deceased and considering the average of 850.20 + 850.20 total rounded

off to Rs.1700/- and total would come to Rs.2552.20. Slicing down by 1/3, the net utility of the deceased to the parents in so far as the economic assistance is concerned would not be in any case less than Rs.500 instead of Rs.150/- assessed by the Tribunal. Therefore, the claimants shall be entitled to Rs.500.00 x 12 = Rs.6,000/- by way of annual dependency which requires to be multiplied at least by 8 multipliers instead of 6. With the result, the claimants shall be entitled to Rs.48,000/- plus the global conventional amount of Rs.20,000/- under the head of loss of expectation of life and Rs.2,000/- for obsequial and other miscellaneous expenses. Therefore, in all, the original appellants who are the original claimants/parents of the deceased shall be entitled to consolidated amount of Rs.70,000/- by way of compensation on account of loss of their unmarried son aged 24 years arising out of the road accident.

Father of the deceased, original claimant No.1/appellant No.1 has expired during the pendency of the appeal leaving appellant No.2 as the surviving heir. Therefore, the entire amount is awardable to the surviving heir, who is the original claimant No.2, mother of the deceased.

In the result, the impugned award is modified and an additional amount of Rs.50,000/- with proportionate costs and interest at the rate of 15% from today till the date of payment, in the peculiar facts and circumstances of the case, with costs, is awarded.

The appeal is partly allowed. The impugned judgment and award shall stand modified to the aforesaid extent. The respondents are directed to deposit the additional amount, if original amount is paid, otherwise full amount, as directed hereinbefore within a period of six weeks before the Tribunal. 20% of the amount of award shall be disbursed by an account payee cheque to the sole surviving appellant-mother of the deceased and remaining 80% of the amount shall be invested in any nationalised bank or in any other government security yielding higher rate of interest, in the name of the appellant No.2-mother of the deceased, initially for a period of three years and the interest which shall accrue thereon periodically shall be paid to the appellant No.2/original claimant No.2-mother of the deceased.